

JEANNETTE L. FENWICK

IBLA 80-468

Decided February 6, 1981

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease. M 26969 Acq.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Silver Spring, Maryland, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

APPEARANCES: Jeannette L. Fenwick, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Jeannette L. Fenwick has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated February 19, 1980, denying her petition for reinstatement of oil and gas lease M 26969 Acq. which terminated by operation of law on February 1, 1980, the anniversary date of the lease, for failure to pay timely the annual rental. The basis of the decision was the lack of reasonable diligence shown by appellant in mailing the rental payment on February 1, the day it was due, from Silver Spring, Maryland, for delivery in Billings, Montana. The postmark date on the payment envelope was deemed to be the date of mailing.

In her statement of reasons for appeal, appellant does not dispute that her lease properly terminated by operation of law; rather, she argues that she has exercised reasonable diligence and is entitled to reinstatement because the rental payment was actually mailed before February 1, when it was placed in a post office box. She contends that the envelope was placed in the box, with a pickup time of 4:30 p.m., at approximately 4:20 p.m. and concludes, "I feel that the early pick up of the box on the day I mailed the renewal of the lease and the \$60.00 check caused the delay in the lease getting in on the day it was due, due to it not being picked up till the next day."

Appellant, however, does not indicate the date when she placed the envelope in the post office box. From the date on the check, January 30, 1980, and her narrative of the events, we would presume that the envelope was deposited there either January 30 or January 31, 1980.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Even if we assume that appellant mailed the check on January 30, 1980, the date on the check, she still would not have exercised reasonable diligence in allowing only 2 days for the payment to reach Billings, Montana, from Silver Spring, Maryland. 1/ The Board

1/ Merely placing the letter containing the check in the mailbox does not constitute filing with BLM. Payment must be received in the proper BLM office on or before the anniversary date to avoid automatic termination of the lease. 43 CFR 3108.2-1(a).

has considered this situation many times and has repeatedly held that mailing the rental 2 days before the due date does not constitute reasonable diligence. Bob W. Scott, 46 IBLA 254 (1980); L. J. Arrieta, 26 IBLA 188 (1976). There is no evidence that appellant's late mailing was justifiable. Accordingly, BLM properly denied appellant's petition for reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

